

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The California Corporations Commissioner ("Commissioner") proposes to amend Section 310.114.1 of the California Code of Regulations (10 C.C.R. Section 310.114.1) under the FRANCHISE INVESTMENT LAW relating to the offering circular, and adopt Section 310.156.3 of the California Code of Regulations (10 C.C.R. Section 310.156.3), which exempts advertisements posted on the Internet from filing under Corporations Code Section 31156, if certain conditions are met.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department to Kathy Womack, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., October 21, 2002. Written comments may also be sent to Kathy Womack (1) via electronic mail at regulations@corp.ca.gov or (2) via fax at (916) 322-3205.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department regulates the offer and sale of franchises under the Franchise Investment Law ("FIL"). Under the FIL, it is unlawful to offer or sell any franchise in this state unless the offer has been registered with the Commissioner or is exempt from registration.

Section 310.114.1: An application for registration of a franchise must be accompanied by a proposed offering circular that complies with the Uniform Franchise Offering Circular ("UFOC") Guidelines, as amended by the North American Securities Administration Association, Inc. on April 25, 1993, and as modified by Section 310.114.1. (See Cal. Corp. Code § 31114.) Due to the recent decisions of the 9th Circuit Court of Appeals in Laxmi v. Golf U.S.A (1999) 193 F.3d 1095 and Bradley v. Harris Research, Inc. (2001) 275 F.3d 884, 890, the Commissioner proposes to amend subsections (c)(5)(A) and (c)(5)(B)(iv) of Section 310.114.1 to change the required disclosures relating to a franchise agreement that requires binding arbitration. The Commissioner also proposes to amend Section 310.114.1 to add subsection (c)(6) to require that a franchisor include a disclosure statement if an earnings claim is made under Item 19 of the Uniform Franchise Offering Circular that does not include costs of sales or operating expenses.

Section 310.156.3: Under the FIL, it is also unlawful to publish in this state any advertisement offering a franchise subject to the registration requirements of the FIL unless it has been filed with the Commissioner or is exempt from filing. (See Cal. Corp. Code § 31156.) The FIL provides the Commissioner with express authority to exempt by rule advertisements from the filing requirement. Under this express authority, the Commissioner proposes to add Section 310.156.3 to the FIL to exempt from the filing requirements advertisements offering a franchise that are posted on the Internet when certain conditions are met.

AUTHORITY

Sections 31156, 31114 and 31502, Corporations Code.

REFERENCE

Sections 31110, 31111, 31114, 31119, 31120, 31125 and 31156, Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of any modified regulations should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document PRO 09/02-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document PRO 09/02-C. These documents are also available at the Department's website www.corp.ca.gov. As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has

otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Cost or Savings to Local Agency or School District, or a Mandate Which Requires Reimbursement Pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Other nondiscretionary cost or savings imposed on local agencies: None.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; and (3) the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

The proposed regulatory action does not affect small business because the proposed action makes clarifying changes to current law and regulations, and exempts a current requirement.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the text of the proposed regulations may be directed to Kathy Womack at (916) 322-3553. The backup contact person is Karen Fong at (916) 322-3553. Inquiries

regarding the substance of the proposed regulation may be directed to Kimberly D. Willy, Corporations Counsel, Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814. (916) 324-9687.

Dated: August 26, 2002
Sacramento, California

DEMETRIOS A. BOUTRIS
California Corporations Commissioner

By _____
TIMOTHY L. Le BAS
Deputy Commissioner and General Counsel
Office of Law and Legislation